



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

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STATE OF NEW HAMPSHIRE
WATER COUNCIL

Decision & Order

Docket No. 03-10 WC

Appeal of the Conservation Law Foundation
In Re: Water Quality Certificate No. 2003-001

Motion to Stay Appeal

Background

On August 18, 2003, the Conservation Law Foundation ("Appellant") filed a petition for appeal, of the issuance of Water Quality Certificate No. 2003-001 to Endicott General Partnership ("Applicant"), with the NH Water Council ("the Council").

On September 17, 2003 the Department of Environmental Services, Wetlands Bureau ("DES") issued a decision reconsidering its prior granting of a wetlands permit for the proposed project. DES' decision denied a Wetlands permit for the proposed project.

On October 6, 2003 the Applicant filed a Motion for Reconsideration of the Wetlands permit denial with DES.

On October 7, 2003, the Appellant filed a Motion to Stay Appeal. In its filing, the Appellant argues that absent of a Wetlands permit, and unless the applicant can succeed in overturning the permit denial, the proposed project cannot be constructed. If the proposed project cannot be constructed the Water Quality Certificate will be rendered unnecessary and thus this appeal will be rendered moot. The Appellant requested that the Council issue a stay of this appeal pending the outcome of the Wetlands permit for the proposed project.

On October 8, 2003, DES assented to the Motion to Stay Appeal.

On October 8, 2003, at its regular Council meeting, the Council raised a question as to whether the Appellant have standing to bring this appeal before the Council. As a result of the standing question, the Council ordered all parties to the appeal to appear before the Council on November 12, 2003, and a Hearing on Standing was to be conducted. The Council further ordered that if the Appellant is granted standing, the appeal hearing would commence immediately following the Hearing on Standing. The Council did not rule on the Appellants October 7, 2003 Motion to Stay.

On October 14, 2003, the Applicant filed an objection to Appellants Motion to Stay. In its objection the Applicant confirmed that the denial of the Wetlands permit is in the reconsideration process at DES. The Applicant also agreed with the Appellant in that there is a relationship between the Wetlands permit and the permit on appeal before the Council. However, the applicant argued that it would be unreasonable to delay the processing of the pending appeal before the Council solely because a Motion for Reconsideration is pending relative to the Wetlands permit.

Discussion / Conclusion

The Council agrees that that if the proposed project cannot be constructed, the Water Quality Certificate, which is the subject of this appeal, will be rendered unnecessary and thus this appeal will be rendered moot. In the interest of efficiency, a stay of this appeal is appropriate at this time. The previously scheduled Hearing on Standing, and subsequent Appeal Hearing, shall also be stayed pending the outcome of the Wetlands permit decision. However, all parties to this appeal are hereby ordered to appear before the Council to offer a case status update at its regular January Council Meeting, currently scheduled for January 14, 2004 at 9:00am. At that time the parties to the appeal should be prepared to request that the Council continue the stay or proceed forward with the appeals process.

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November 4, 2003

Order

Motion to Stay Appeal is **GRANTED** with conditions noted above.

So Ordered for the Council by:

COPY

November 4, 2003

Michael Scalfani, Appeals Clerk